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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000716-MR

WILLIAM EASLEY — APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 07-CR-00172

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: William Easley appeals from the judgment of the Graves Circuit Court convicting him of eighteen counts of knowingly exploiting an adult (over $300.00) and two counts of knowingly exploiting an adult (under $300.00) and sentencing him to a total of ten years' imprisonment. After careful review, we affirm the judgment.

In June 2007, Easley was indicted by the Graves County Grand Jury and charged with eighteen counts of felony exploitation of an adult pursuant to Kentucky Revised Statutes (KRS) 209.990 in connection with the handling of his mother's and aunt's financial affairs while acting as attorney-in-fact under their powers of attorney (POA). Easley was also charged with two counts of misdemeanor exploitation of an adult in connection with the handling of his aunt's affairs. The charges stemmed from transactions that occurred from March 2006 through March 2007.

Easley's trial began on January 20, 2009, and ended the following day. According to the Commonwealth's proof, Easley took over as attorney-in-fact for his mother, Ruth Easley, in July 2005. By then, Ruth Easley was living in a nursing home. In November 2006, the Cabinet for Health and Family Services (Cabinet) was asked to investigate the possible financial exploitation of Ruth Easley. Sandra Halter, a representative from the Cabinet, spoke with Ruth Easley about her concerns.

When Ms. Halter spoke with Easley, he denied misusing his mother's money. As part of her investigation, Ms. Halter obtained the financial records for Ruth Easley's accounts. From these records, she created a spreadsheet of transactions for the accounts beginning in July 2005, when Easley took over as attorney-in-fact under POA, through March 2007.

Using her spreadsheet, Ms. Halter testified that from September 15, 2005, through December 12, 2005, Easley wrote $16,630.00 in checks to himself

from his mother's checking account. Similarly, from December 12, 2005, through June 19, 2006, Easley wrote $43,500.00 in checks to himself; from June 29, 2006, through December 28, 2006, he wrote $18,405.00 in checks to himself; and from January 2007 through March 2007, he wrote $3,769.00 in checks to himself. Thus, from the period of September 2005 through March 2007, Easley wrote a total of $82,304.00 in checks to himself from his mother's account. The memo lines of many of the checks Easley wrote to himself were left blank.

The evidence indicated that there was sufficient money to pay Ruth Easley's bills when Easley took over as attorney-in-fact in the middle of 2005. Each month, approximately $5,000.00 was deposited into Ruth Easley's accounts from social security, a teacher's pension, and a separate investment account. Additionally a lump sum of about $66,000.00 had previously been deposited into her account as a result of a condemnation proceeding. However, Easley stopped paying his mother's nursing home bills, and several checks were returned due to insufficient funds. Ms. Halter testified that Easley failed to pay about $20,000.00 of his mother's bills, including $14,000.00 to his mother's nursing home; approximately $1,000.00 to a drug store; and about $2,900.00 to a local attorney. When Easley ceased acting as his mother's attorney-in-fact in March 2007, Ruth Easley's other son took control and paid his mother's bills from his own funds.

While acting as attorney-in-fact for his aunt, Virginia Easley, Easley wrote checks to himself from her account and took money from her account via ATM transactions. Easley also failed to pay his aunt's bills as well.

Despite knowing that his handling of his mother's and aunt's financial affairs was being investigated by the Cabinet, Easley did not respond to calls or a letter from Ms. Halter. Easley never provided any documents to Ms. Halter or police indicating the money he took from the accounts was spent for his mother's and aunt's benefits.

In his defense, Easley testified that he wrote the checks at issue and that those checks were written to reimburse him for expenses incurred in taking care of his mother's farm and his aunt's financial affairs. He testified that both his mother and his aunt told him to pay his expenses from their monies.

Prior to the trial, on January 5, 2009, Easley asked the trial judge to suppress the bank records obtained by the Cabinet. The Commonwealth responded, and on January 12, 2009, a brief hearing was held regarding Easley's motion. The Commonwealth presented testimony from Ms. Halter regarding her investigation and her legal authority under KRS 209.030(7) for obtaining Ruth Easley's bank records. Easley offered testimony regarding his alleged interest in his mother's accounts. At the conclusion of that hearing, the trial judge denied Easley's motion to suppress the bank records, and this ruling was memorialized in an order entered January 15, 2009.

Also pertinent to this appeal is Easley's history of refusing to cooperate with his defense counsel by providing records which may or may not have refuted the allegations detailed in the indictments. On October 9, 2007, Attorney Dennis Null filed a motion to withdraw as Easley's counsel on the

grounds that "Defendant and counsel are unable to maintain an attorney-client relationship, which will permit counsel to properly and adequately represent the Defendant." On the record, Attorney Null explained that he had been going back and forth with Easley for several months regarding witnesses, his client's failure to keep him informed of what was going on, and his inability to provide documents and other evidence that would support his defense. The trial court permitted Attorney Null to withdraw, and Easley then hired new counsel, Attorney Benjamin Lookofsky.

On April 28, 2008, the trial judge set a trial date of November 18, 2008, giving the parties about seven months to prepare. When the November trial date arrived, however, defense counsel asked for a continuance the morning of the trial because he was not prepared to proceed. Attorney Lookofsky stated that he had had trouble communicating with Easley— Easley indeed arrived late for trial —and Easley had failed to provide certain documents allegedly pertinent to his defense. In response, the prosecutor indicated that he felt as if he were being blind-sided, and defense attorney Lookofsky agreed and noted that he understood the prosecutor's sentiments.

At the conclusion of this discussion, the trial court agreed to continue the trial until January 20, 2009. As for the documents at issue, the prosecutor asked that they be produced to him no later than January 1, 2009, and the trial court included that requirement in his continuance order, with the parties to meet on January 12, 2009, to discuss. Notwithstanding the trial court's verbal

directives, the court entered an order directing Easley to produce the documents by January 12, 2009, when the parties were to appear in court. The order expressly required Easley to be present in court on the 12th of January.

On January 12, 2009, when the attorneys appeared in court for review of the documents and to address Easley's motion to suppress, Easley was not present. Video records show Easley arriving later that afternoon with a box. Again the prosecutor complained that he had not received any documents from the defense, and again Attorney Lookofsky candidly explained that his client was not cooperating and was not providing any documents. The trial court then warned Easley that if the prosecutor did not have the documents by the close of business that day, they would be excluded at trial. The trial court informed Easley that if he appeared late to court again, he would be held in contempt and put in jail.

Notwithstanding these events, on the morning of the trial, Easley again asked for yet another continuance and complained that his defense counsel was not prepared for trial. This request was denied. When the document issue was addressed, the prosecutor handed the trial court a small stack of documents he received on Friday, January 16, 2009, explaining that the documents contained alleged substantiation of less than $2,000.00 Easley had taken from his mother. The trial judge held that while the prosecutor was likely entitled to have his motion to suppress granted *in toto*, he would allow the documents delivered to the prosecutor on January 16, 2009, to be admitted at trial but would exclude documents delivered after that date.

At the close of the proof, the jury found Easley guilty on all charges and recommended a sentence of ten years' imprisonment. This appeal now follows.

As his first assignment of error on appeal, Easley argues that the trial court erred by not granting his motion to suppress the Cabinet's review of his mother's bank records without legal process. In support of this argument, Easley contends he had an ownership interest in the bank account, and the bank should never have turned over the records without some sort of legal process.

When seeking to suppress evidence, a defendant must first demonstrate he had a reasonable expectation of privacy in the property searched. *Foley v. Commonwealth*, 953 S.W.2d 924, 934 (Ky. 1997). The factual findings of the trial court in regard to a suppression motion are conclusive if supported by substantial evidence. Kentucky Rules of Criminal Procedure (RCr) 9.78.

In *LaFollette v. Commonwealth*, 915 S.W.2d 747, 749 (Ky. 1996), the Kentucky Supreme Court noted an expectation of privacy is reasonable only where the individual manifests a subjective expectation of privacy in the object of the challenged search *and* society is willing to recognize the subjective expectation as reasonable. The United States Supreme Court has repeatedly recognized that what one exposes to the public or discloses to third parties is not subject to Fourth Amendment protection. *E.g.*, *Smith v. Maryland*, 442 U.S. 735, 743-44, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979). As such, courts have recognized that persons have no expectation of privacy in such things as phone numbers they dial, rolls of film

given to third parties for processing, and information disclosed to their Internet service providers. *Id.*

As for Easley's specific claim regarding his mother's bank account records, the nation's highest court has recognized an individual has no reasonable expectation of privacy in his/her bank records:

> Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate "expectation of privacy" in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. . . .
>
> The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person . . . .

United States v. Miller, 425 U.S. 435, 442-43, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976); *Williams, M.D. v. Commonwealth*, 213 S.W.3d 671 (Ky. 2007) (citing *Miller*). Indeed, the high court recognized an individual "can assert neither ownership nor possession" in the records because these records "are the business records of the banks." *Miller*, 425 U.S. at 440. Thus Easley's mother's bank records were not subject to the protections of the Fourth Amendment or Section 10 of the Kentucky Constitution, and Easley's claims fail as a matter of law. The trial court properly denied Easley's motion to suppress.

For his second claim of error, Easley contends the trial court erred by not permitting him to "put on evidence of the use of [his] mother's money." Easley argues that the trial court should not have excluded certain documents from being introduced and admitted at trial.

Kentucky Rules of Criminal Procedure (RCr) 7.24(9) permits a trial judge to exclude from evidence documents not turned over in discovery as required by court order. We review the trial court's decision for abuse of discretion. *Penman v. Commonwealth*, 194 S.W.3d 237, 249 (Ky. 2006) (overruled on other grounds by *Rose v. Commonwealth*, 322 S.W.3d 76 (Ky. 2010)). In light of Easley's ongoing failure to cooperate with his defense counsel, his refusal to produce documents, and his disregard for the trial court's discovery order to have the documents to the prosecutor by January 12, 2009, we cannot say that the trial court abused its discretion by excluding the documents at issue. Easley had ample time to produce these documents, and he did not. The trial court granted Easley a continuance and was more than fair in working with Easley, but Easley simply failed to take the chances given to him. Further, the trial court did not exclude all the documents Easley wanted to introduce, and nothing in the court's orders prevented Easley from simply telling the jury how he spent his mother's money. Accordingly, the trial court did not err in excluding the documents from evidence, and its ruling was not an abuse of discretion.

For his third claim of error on appeal, Easley contends that the trial court erred by permitting the Commonwealth to present evidence of checks he wrote to

himself from his mother's account in 2005; *i.e.*, outside the March 2006 to March 2007 period set forth in the indictment.

The Commonwealth presented proof at trial that Easley took over as attorney-in-fact under his mother's POA on July 26, 2005, and from September 15, 2005, through December 12, 2005, bank records showed Easley wrote $16,630.00 in checks to himself. As described previously, from December 12, 2005, through June 19, 2006, Easley wrote $43,500 in checks; from June 29, 2006, through December 28, 2006, he wrote $18,405.00 in checks; from January 2007 through March 2007 he wrote $3,769.00 in checks; and from September 2005 through March 2007, Easley wrote a total of $82,304.00 in checks from his mother's accounts to himself.

Under Kentucky Rules of Evidence (KRE) 404(b), evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith[,]" but such evidence is admissible if "offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident[.]" KRE 404(b)(1). KRE 404(b)(2) provides another exception if the evidence is "inextricably intertwined with other evidence essential to the case[.]"

In *Bell v. Commonwealth*, 875 S.W.2d 882, 889 (Ky. 1994), the Kentucky Supreme Court adopted a three-part test for determining the admissibility of other crimes evidence under KRE 404(b). Under *Bell*, the first inquiry is whether the proposed evidence is "relevant for some purpose other than to prove the criminal

disposition of the accused." *Id.* The term "relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." KRE 401.

In the instant case, the 2005 checks and evidence were relevant to show that Easley's plan was to take his mother's money soon after he took over as attorney-in-fact in July 2005. The fact that he began writing checks to himself in 2005 also shows that the checks he wrote during the indictment period were not a mistake, an accident, or simply the result of poor bookkeeping.

The second *Bell* inquiry is whether the evidence of the bad act is "sufficiently probative of its commission by the accused to warrant its introduction into evidence." *Id.* at 890. Here, there is no question that the evidence regarding the 2005 checks is probative of whether Easley committed the acts at issue in the indictment.

The third and final *Bell* inquiry is whether "the potential for prejudice from the use of other crimes evidence substantially outweigh[s] its probative value." *Id.* In his brief, Easley argues the jury's verdict is suspect because it is impossible to tell if the jury convicted and sentenced him based on the 2005 checks he wrote to himself or because it believed that he committed the crimes charged. Juries are composed of reasonable persons who are not easily confused. *See Scobee v. Donahue*, 291 Ky. 374, 164 S.W.2d 947, 949 (1942) ("It is to be assumed that the jury was composed of sensible and reasonable men and to be presumed that they

understood and followed the evidence and instructions in their entirety."). The proof in the instant case was not complex, and there is no reason to believe the jury became confused between checks written in 2005 and checks written during the indictment period.

Finally, Easley argues that the trial court abused its discretion by denying his second request to continue the trial. A trial judge may postpone a trial upon a showing of sufficient cause. RCr 9.04; *Snodgrass v. Commonwealth*, 814 S.W.2d 579, 581 (Ky. 1991) (overruled on other grounds by *Lawson v. Commonwealth*, 53 S.W.3d 534 (Ky. 2001)). The decision to delay a trial rests solely in the discretion of the trial judge, and whether a continuance is appropriate depends on the "unique facts and circumstances of that case." *Snodgrass* at 581.

> Factors the trial court is to consider in exercising its discretion are: length of delay; previous continuances; inconvenience to litigants, witnesses, counsel and the court; whether the delay is purposeful or is caused by the accused; availability of other competent counsel; complexity of the case; and whether denying the continuance will lead to identifiable prejudice.

Id. (internal citation omitted). Finally, a reviewing court will not disturb such a decision unless it is clearly demonstrated to be an abuse. *Toler v. Commonwealth*, 295 Ky. 105, 173 S.W.2d 822 (1943).

Weighing the *Snodgrass* factors, it is clear the trial court did not abuse its discretion in denying what amounted to Easley's second last-minute attempt to delay his trial. The first factor, length of the delay, did not weigh in Easley's favor. He was indicted in mid-2007 and was given notice seven months in advance

as to when the first trial would occur. He was given a two-month continuance in November, and when the second trial date arrived he requested an additional ninety-day continuance. Easley's proposed continuance would have continued the trial to a date almost two years after he was indicted. For a case with an uncomplicated set of facts, this length of time seems quite excessive.

Regarding the second factor, Easley had already been granted previous continuances and demonstrated that he was not cooperating with his original attorney or his second defense counsel. Furthermore, another continuance would have caused an inconvenience to the Commonwealth, not to mention to the victims' families. Easley's delays appeared to be purposeful and caused by Easley himself, which weighs against Easley. Easley does not make any argument about the fifth factor, the availability of competent counsel, and thus we will not address it now.

The sixth factor, complexity of the case, weighs against Easley as well. The Commonwealth presented its case via six witnesses in less than four hours. The defense presented its case in about one hour through one witness. The concepts at issue were not difficult and neither was the proof. The final factor, identifiable prejudice, does not weigh in Easley's favor either. In his brief, Easley simply argues that the "defense was prejudiced by not being allowed to fully defend Easley." We disagree. There is no proof in the record that Easley was in any way prejudiced by the trial court's refusal to grant another continuance, and any lack of

a defense was due to nothing other than his lack of cooperation with not one, but two defense attorneys.

Because we have been presented with no reversible error, the judgment of the Graves Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Karen Shuff Maurer
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky